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INTRODUCED BY Senators Bruce Foster Stovall Hoyer <sup>SENATE BILL NO. 137</sup>

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; CLARIFYING THE THIRD-PARTY DEFENSE TO LIABILITY TO CONFORM TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT; REVISING THE DEFINITION OF "HAZARDOUS MATERIAL INCIDENT"; CLARIFYING THE STATUTE OF LIMITATIONS FOR COST RECOVERY TO CONFORM TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT; AMENDING SECTIONS 75-10-715, 75-10-716, AND 75-10-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601, et seq., as amended, was adopted to address the threat to public health and welfare and the environment from the release or threatened release of hazardous substances; and

WHEREAS, the Montana Legislature, in the Comprehensive Environmental Cleanup and Responsibility Act (CECRA), adopted similar statutory provisions for the cleanup of sites within the state where the public health, safety, and welfare or the environment is endangered by the release or threatened release of a hazardous or deleterious substance; and

WHEREAS, it was the intent of the Montana Legislature to adopt a state statute that was substantially consistent with the provisions of CERCLA; and

WHEREAS, condensing the federal law into a workable state statute left certain provisions ambiguous.

THEREFORE, the Legislature of the State of Montana finds that it is appropriate to clarify the provisions in CECRA relating to the third-party defense to liability and the statute of limitations for cost recovery to better conform to the corresponding provisions in CERCLA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1           **Section 1.** Section 75-10-715, MCA, is amended to read:

2           **"75-10-715. Liability -- reimbursement and penalties -- proceedings -- defenses.** (1)  
3       Notwithstanding any other provision of law and subject only to the defenses set forth in subsection (5),  
4       the following persons are jointly and severally liable for a release or threatened release of a hazardous or  
5       deleterious substance from a facility:

6           (a) a person who owns or operates a facility where a hazardous or deleterious substance was  
7       disposed of;

8           (b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated  
9       a facility where the hazardous or deleterious substance was disposed of;

10          (c) a person who generated, possessed, or was otherwise responsible for a hazardous or  
11       deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment  
12       of the substance or arranged with a transporter for transport of the substance for disposal or treatment;  
13       and

14          (d) a person who accepts or has accepted a hazardous or deleterious substance for transport to  
15       a disposal or treatment facility.

16          (2) A person identified in subsection (1) is liable for the following costs:

17           (a) all remedial action costs incurred by the state; and

18           (b) damages for injury to, destruction of, or loss of natural resources caused by the release or  
19       threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim  
20       for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were  
21       specifically identified as an irreversible and irretrievable commitment of natural resources in an approved  
22       final state or federal environmental impact statement or other comparable approved final environmental  
23       analysis for a project or facility that was the subject of a governmental permit or license and the project  
24       or facility was being operated within the terms of its permit or license.

25          (3) If the person liable under ~~75-10-715(1)~~ subsection (1) fails, without sufficient cause, to comply  
26       with a department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon  
27       notification by the department pursuant to 75-10-711(3), the person may be liable for penalties in an  
28       amount not to exceed two times the amount of any costs incurred by the state pursuant to this section.

29          (4) The department may initiate civil proceedings in district court to recover remedial action costs,  
30       natural resource damages, or penalties under subsections (1) through (3). Proceedings to recover costs and

1 penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs,  
2 damages, or penalties lies in the county where the release occurred or where the person liable under  
3 ~~75-10-715(1)~~ subsection (1) resides or has its principal place of business or in the district court of the first  
4 judicial district.

5 (5) ~~No~~ A person is not liable under subsections (1) through (3) if that person can establish by a  
6 preponderance of the evidence that:

7 (a) the department failed to follow the notice provisions of 75-10-711 when required;

8 (b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed  
9 any hazardous or deleterious substance or over which the person had any ownership, authority, or control  
10 and was not caused by any action or omission of the person;

11 (c) the release or threatened release occurred solely as a result of:

12 ~~(i)~~ an act or omission of a third party other than ~~either~~ an employee or agent of the person, or

13 ~~(ii) an act or omission of a third party~~ other than one whose act or omission occurs in connection  
14 with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by  
15 a preponderance of the evidence that ~~he~~ the person:

16 ~~(A)~~(i) exercised due care with respect to the hazardous or deleterious substance concerned, taking  
17 into consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts  
18 and circumstances; and

19 ~~(B)~~(ii) took precautions against foreseeable acts or omissions of a third party and the consequences  
20 that could foreseeably result from those acts or omissions;

21 (d) the release or threat of release occurred solely as the result of an act of God or an act of war;

22 (e) the release or threatened release was from a facility for which a permit had been issued by the  
23 department, the hazardous or deleterious substance was specifically identified in the permit, and the release  
24 was within the limits allowed in the permit;

25 (f) in the case of assessment of penalties under subsection (3), that factors beyond the control of  
26 the person prevented the person from taking timely remedial action; or

27 (g) the person accepted only household refuse (garbage, trash, or septic tank sanitary wastes  
28 generated by single or multiple residences, hotels, motels, restaurants, or similar facilities) for transport to  
29 a solid waste disposal facility, unless that person knew or reasonably should have known that the  
30 hazardous or deleterious substance was present in the refuse.

1           (6) (a) For the purpose of subsection (5)(c)~~(#)~~, the term "contractual relationship" includes but is  
2 not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real  
3 property on which the facility is located was acquired by the person after the disposal or placement of the  
4 hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances  
5 ~~is~~ are also established by the person by a preponderance of the evidence:

6           (i) At the time the person acquired the facility, the person did not know and had no reason to know  
7 that a hazardous or deleterious substance that is the subject of the release or threatened release was  
8 disposed of on, in, or at the facility.

9           (ii) The person is a governmental entity that acquired the facility by escheat, by lien foreclosure,  
10 ~~or~~ through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority  
11 by purchase or condemnation.

12           (iii) The person acquired the facility by inheritance or bequest.

13           (b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through  
14 (6)(a)(iii), the person shall establish that ~~he has satisfied~~ the requirements of ~~subsections~~ subsection (5)(c)~~(#)~~  
15 ~~or (5)(e)(ii) have been satisfied.~~

16           (c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the  
17 person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership  
18 and uses of the property consistent with good commercial or customary practice in an effort to minimize  
19 liability. For purposes of assessing this inquiry, the following must be taken into account:

20           (i) any specialized knowledge or experience on the part of the person;

21           (ii) the relationship of the purchase price to the value of the property if uncontaminated;

22           (iii) commonly known or reasonably ascertainable information about the property;

23           (iv) the obviousness of the presence or the likely presence of contamination on the property; and

24           (v) the ability to detect the contamination by appropriate inspection.

25           (d) (i) Nothing in subsections (5)(b) and (5)(c) or in this subsection (6) may diminish the liability of  
26 a previous owner or operator of the facility who would otherwise be liable under this part.

27           (ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge  
28 of the release or threatened release of a hazardous or deleterious substance at the facility when the person  
29 owned the real property and then subsequently transferred ownership of the property to another person  
30 without disclosing the knowledge, the previous owner is liable under subsections (1) through (3) and no

1 defense under subsection (5)(b) or (5)(c) is available to that person.

2 (e) Nothing in this subsection (6) affects the liability under this part of a person who, by any act  
3 or omission, caused or contributed to the release or threatened release of a hazardous or deleterious  
4 substance that is the subject of the action relating to the facility."

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6 **Section 2.** Section 75-10-716, MCA, is amended to read:

7 **"75-10-716. Definitions.** As used in 75-10-717 and this section, the following definitions apply:

8 (1) "Emergency responder" means a public safety agency or a private entity acting under a request  
9 from or authority granted by a government agency, including law enforcement, firefighting, ambulance or  
10 medical, and civil defense, that provides services in an emergency situation.

11 (2) "Hazardous material incident" means a release or threatened release involving a hazardous or  
12 deleterious substance that endangers property, public health, or public safety."

13  
14 **Section 3.** Section 75-10-722, MCA, is amended to read:

15 **"75-10-722. Payment of state costs and penalties.** (1) The department shall keep a record of the  
16 state's remedial action costs.

17 (2) Based on this record, the department shall require a person liable under 75-10-715 to pay the  
18 amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).

19 (3) If the state's remedial action costs and penalties are not paid by the liable person to the  
20 department within 60 days after receipt of notice that the costs and penalties are due, the department shall  
21 bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

22 (4) An action to recover remedial action costs may be brought under this section at any time after  
23 any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability  
24 for remedial action costs that is binding on any subsequent action or actions to recover further remedial  
25 action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show  
26 on the record that the costs are not reasonable and are not consistent with this part.

27 (5) An initial action for recovery of remedial action costs must be commenced within 6 years after  
28 initiation of physical onsite construction of the ~~remedial action~~ final permanent remedy.

29 (6) Remedial action costs and any penalties recovered by the state under 75-10-715 must be  
30 deposited into the environmental quality protection fund established in 75-10-704."

1            **NEW SECTION. Section 4. Retroactive applicability.** [Sections 1 through 3] apply retroactively,  
2 within the meaning of 1-2-109, MCA, to all occurrences after May 22, 1989.

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4            **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

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